

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Docket No. **FIFRA-08-2003-0010**

|                            |   |  |
|----------------------------|---|--|
| In the Matter of:          | ) |  |
|                            | ) |  |
| Bauserman Farms, Inc.      | ) | <b>PENALTY COMPLAINT AND NOTICE OF<br/>OPPORTUNITY FOR HEARING</b> |
| 11786 Highway 50           | ) |  |
| Manzanola, Colorado 81158, | ) |  |
|                            | ) |  |
| Respondent                 | ) |  |

**INTRODUCTION (JURISDICTION)**

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. section 136l(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by using registered pesticides in a manner inconsistent with their labels, and proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136l(a).

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (999 18<sup>th</sup> St; Suite 300; Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.  
**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS**

**MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

**QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$5,720) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

**SETTLEMENT NEGOTIATIONS**

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800-227-8917; extension 6924 or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

**GENERAL ALLEGATIONS**

The following general allegations apply to each count of this complaint:

8. Respondent operates a farm located at 11786 Highway 50, Manzanola, Colorado and grows various vegetables and fruits.
9. Respondent hires workers to perform activities related to the production of crops.
10. Respondent is an "agricultural employer" within the meaning of 40 C.F.R. section 170.3.
11. Respondent, Bauserman Farms Inc., is incorporated in the State of Colorado.

12. Respondent is a “person” within the meaning of section 2(s) of FIFRA, and therefore subject to the requirements of the statute and/or regulations.
13. Respondent is a “private applicator” within the meaning of section 2(e)(2) of FIFRA.
14. FIFRA section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with its labeling.
15. An authorized EPA employee visited Respondent’s farm with the consent of Respondent on August 23, 2001, to inspect it for compliance with the statute and regulations.
16. On November 1, 2001, EPA issued a Notice of Warning to Respondent for violating FIFRA by using registered pesticides in a manner inconsistent with its labeling. The violations involved the application of pesticides without complying with several requirements of EPA’s Worker Protection Standard (WPS), authorized by 7 U.S.C. section 136w(a)(1) and found at 40 C.F.R. part 170, which was required to be followed per the label directions.
17. An authorized EPA employee again visited Respondent’s farm with the consent of Respondent on August 20, 2002, to inspect it for compliance with the statute and regulations.
18. During the inspection “workers,” within the meaning of 40 C.F.R. section 170.3, were present at Respondent’s farm.
19. Each of the pesticides described below (Sevin, EPA Reg. No. 264-333; Asana, EPA Reg. No. 352-515; and Dimethoate, EPA Reg. No. 34704-207) is a registered pesticide and may only be used in accordance with label directions, including complying with the WPS codified at 40 C.F.R. part 170.
20. The WPS requires employers to display specific information about applications of pesticides if the workers are at the farm within 30 days of the application. 40 C.F.R. section 170.122.
21. The WPS requires employers to post specific emergency medical care information if workers are at the farm within 30 days of a pesticide application. 40 C.F.R. section 170.135(c).
22. Each failure to follow the WPS requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA section 12(a)(2)(G).

## **COUNTS 1 & 2**

23. On July 29, 2002, Respondent applied a pesticide called Sevin on a squash crop field.

24. On August 20, 2002, Respondent was not displaying specific information (Count 1), as required by 40 C.F.R. section 170.122, about the July 29 application of Sevin, nor displaying specific emergency medical information (Count 2), as required by 40 C.F.R. section 170.135(c).

25. Since Respondent failed to display specific emergency medical information and display specific information about the July 29, 2002 application of the pesticide Sevin on the squash field, the two failures to comply with the WPS requirements constitute two uses of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

## **COUNTS 3 & 4**

26. On July 29, 2002, Respondent applied a pesticide called Sevin on a cucumber crop field.

27. On August 20, 2002, Respondent was not displaying specific information (Count 3), as required by 40 C.F.R. section 170.122, about the July 29 application of Sevin, nor displaying specific emergency medical information (Count 4), as required by 40 C.F.R. section 170.135(c).

28. Since Respondent failed to display specific emergency medical information and display specific information about the July 29, 2002 application of the pesticide Sevin on the cucumber field, the two failures to comply with the WPS requirements constitute two uses of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

## **COUNTS 5 & 6**

29. On August 3, 2002, Respondent applied a pesticide called Asana on a tomato crop.

30. On August 20, 2002, Respondent was not displaying specific information (Count 5), as required by 40 C.F.R. section 170.122, about the August 3 application of Asana, nor displaying specific emergency medical information (Count 6), as required by 40 C.F.R. section 170.135(c).

31. Since Respondent failed to display specific emergency medical information and display specific information about the August 3, 2002 application of the pesticide Asana, the two

failures to comply with the WPS requirements constitute two uses of a registered pesticide in a manner inconsistent with its labeling. These are violations of FIFRA section 12(a)(2)(G).

### **COUNTS 7 & 8**

32. On August 3, 2002, Respondent applied a pesticide called Dimethoate on a pepper crop.

33. On August 20, 2002, Respondent was not displaying specific information (Count 7), as required by 40 C.F.R. section 170.122, about the August 3 application of Dimethoate, nor displaying emergency medical information (Count 8), as required by 40 C.F.R. section 170.135(c).

34. Since Respondent failed to display specific emergency medical information and display specific information about the August 3, 2002 application of the pesticide Dimethoate, the two failures to comply with the WPS requirements constitute two uses of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **PROPOSED CIVIL PENALTY**

35. For private applicators, FIFRA authorizes the assessment of a civil penalty of up to \$1,100 for each offense of the Act. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established Agency policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. For the FIFRA violations alleged in this complaint, EPA proposes a penalty of \$660 for Counts One through Four and \$770 for Counts Five through Eight, for a total penalty of \$5,720.

36. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. For eight violations, the maximum would be \$8,800.

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917; ext. 6924, or at the address below.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
999 18<sup>th</sup> Street, Suite 300 (ENF-L)  
Denver, CO 80202

Date: 5/15/03

By: SIGNED  
Elisabeth Evans, Director  
Technical Enforcement Program

Date: 5/21/03

By: DAVID J. JANIK  
Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 5/5/2003

By: SIGNED  
Eduardo Quintana, Enforcement Attorney  
Legal Enforcement Program

**DOCKET NO.: FIFRA-08-2003-0010**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region VIII, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Federal Express to:

Steve Bauserman, President  
Bauserman Farms, Inc.  
11786 Highway 50  
Manzanola, Colorado 81158

**June 3, 2003** \_\_\_\_\_  
Date

**Judith M. McTernan** \_\_\_\_\_

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 3, 2003.**